

BEFORE THE FEDERAL ELECTION COMMISSION

MAR 23 2007

SENSITIVE

In the Matter of)

MURs 5817, 5827, 5829, 5836,
5847, 5852, 5858, and 5863)

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYSTEM

DEBATE CASES (From The '06 CYCLE))

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated
matters) and are deemed inappropriate for review

are forwarded to the Commission with a recommendation for dismissal. The

Commission has determined that pursuing low-rated matters compared to other higher rated
matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to
dismiss these cases.

The Office of General Counsel scored MURs 5817, 5827, 5829, 5836, 5847, 5852,
5858, and 5863 as low-rated matters. In MURs 5817, 5836, 5847, 5852, 5858, and 5863, the
complainants challenged whether the debate staging organizations and entities used and/or
properly construed pre-established objective criteria in order to determine whether a
particular candidate could participate in their debate.² In MURs 5827 and 5829, the

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² 11 C.F.R. § 110.13(c) provides that "[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use the nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate."

1 complainants claimed that the staging organization set up the seating for the debate in order
2 to advance one candidate over another in violation of 11 C.F.R. § 110.13(b)(2).³

3 In MURs 5817, 5836, 5847, 5852, 5858, and 5863, the complainants were third party
4 candidates who appeared to receive marginal electoral support and evidenced little to no
5 campaign organization. The staging organizations and entities in these cases claimed they
6 applied pre-established objective criteria in assessing whether to include or exclude
7 candidates from their debates.

8 In MURs 5827 and 5829, the complaints centered on the favorable seating assigned to
9 one candidate's supporters over another. The respondents in these matters asserted that the
10 seating design was unintentional and in any case did not violate the Commission's
11 regulations. Additionally, a claim that a \$200 corporate contribution was received by the
12 staging organization was refuted.

13 In reviewing the allegations and responses in these matters, and in furtherance of the
14 Commission's priorities and resources, relative to other matters pending on the Enforcement
15 docket, the Office of General Counsel believes that the Commission should exercise its
16 prosecutorial discretion and dismiss these matters. *See Heckler v. Chaney*, 470 U.S. 821
17 (1985).

18 **RECOMMENDATION**

19 The Office of General Counsel recommends that the Commission dismiss
20 MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863, close the files effective two
21 weeks from the date of the Commission vote, and approve the appropriate letters. Closing


³ 11 C.F.R § 110.13(b) provides that "[t]he structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that: (1) Such debates include at least two candidates; and (2) The staging organization(s) does not structure the debates to promote or advance one candidate over another."


these cases as of this date will allow CELA and General Law and Advice the necessary time
to prepare the closing letters and the case files for the public record.

Thomasenia P. Duncan
Acting General Counsel

3/22/07
Date

BY:


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Attachments:

Narratives in MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863

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5 **MUR 5858**

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7 **Complainant:** Richard Mack

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9 **Respondent:** KNAZ Television

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11 **Allegations:** Complainant alleges that he was improperly excluded from one of three
12 senatorial debates sponsored by the respondent, KNAZ Television, which was held in
13 Arizona during October of 2006. The complainant claims that the reason he was give for
14 his exclusion from the debate was that one of his opponents, Jon Kyl, would not
15 participate in the debate if the complainant was present. Furthermore, KNAZ refused to
16 share its criteria for selecting participants for the debate with the complainant.

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18 **Response:** KNAZ responded that it took the following factors into consideration when it
19 decided not to invite the complainant to its debate: lack of a public record indicating that
20 the complainant had an organized campaign; polling showing the candidate had only
21 minimal support (2% of the vote); and the lack of a campaign headquarters and
22 committee. Additionally, the respondent denied making any reference concerning the
23 complainant opponent's participation in the debate. In fact, the respondent indicated that
24 the opponent never indicated he would not attend the debate if the complainant was
25 invited.

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27 **General Counsel's Note:** It should be noted that there is no record that Richard Mack
28 registered with the Commission. Richard Mack did receive 3% of the vote in the General
29 Election.

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31 **Date complaint filed:** October 23, 2006

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33 **Response filed:** November 17, 2006

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